



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

141

**CRM-M-28923-2025 (O&M)
Date of decision : 23.07.2025**

Keshav Kumar**...Petitioner****Versus****State of Haryana and another****...Respondents****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present: Mr. S. P. Yadav, Advocate
for the petitioners.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (*for short* 'BNSS') seeking quashing of complaint bearing NACT No. 371 of 2023 titled as ***Balwant vs. Keshav Kumar***, filed under Section 138 of Negotiable Instruments Act, 1881 (*for short* 'NI Act'), pending before the competent Court at Narnaul, in view of civil suit No. 964 of 2024, filed by him seeking to declare him as an insolvent person.

2. Brief facts of the case relevant for the purpose of disposal of present petition are that the aforementioned complaint has been filed by the respondent on the allegations that the petitioner has taken a friendly loan of Rs. 6,50,000/- from him and in order to discharge his liability towards the said loan, he issued a cheque for a sum of Rs. 6,50,000/- in favour of the respondent. The said cheque had been dishonoured on presentation. Statutory notice was issued against the petitioner. He failed to pay the



amount of cheque in question, thereby compelling the respondent to file the aforementioned complaint.

3. On considering the preliminary evidence produced by the respondent, the learned trial Magistrate summoned the petitioner to face trial for commission of offence punishable under Section 138 of the N. I. Act. The petitioner has prayed for quashing of the complaint by filing the present petition.

4. It is argued by learned counsel for the petitioner that the impugned complaint is liable to be quashed as the petitioner has neither moveable nor immoveable property. In fact, he has no cash, jewelry or any other source of income and is unable to pay the cheque amount to the respondent/complainant. He has filed aforesaid civil suit under Section 7 of the Provincial Insolvency Act, 1920 seeking declaration to the effect that he is an indigent/insolvent person, thereby absolving him from the liabilities qua the respondent as well as general public. It is, therefore, urged that the petition deserves to be allowed and the impugned complaint is liable to be quashed.

5. I have heard learned counsel for the petitioner at considerable length and have also gone through the material placed on record.

6. At the outset, it is to be considered as to whether, the prayer made by the petitioner for quashing of complaint can be considered by this Court in a petition filed under Section 528 of BNSS (*which is pari materia with Section 482 of the Code of Criminal Procedure*). The Hon'ble Supreme Court has laid down certain conditions whereby the complaint can be



quashed by invoking the powers under the above mentioned Section in a case reported as ***Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalzi and others (1976) 3 SCC 736*** which are as follows:-

- (1) Where the allegations made in the complaint or the statements of the witnesses recorded in support of the same, taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;
- (2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;
- (3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and
- (4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.

7. Further, the question as to whether the order passed by the Magistrate of issuing summons, can be interfered with, in exercise of powers under Section 482 of Cr.P.C. had also been considered by Hon'ble Supreme Court in ***Bhushan Kumar and another Vs. State (NCT of Delhi) and another (2012) 5 SCC 424*** and in ***M/s Pepsi Food Ltd's case (supra)*** wherein it was observed that a petition filed under Section 482 of Cr,P,C, for quashing an order summoning the accused is maintainable.

8. Similarly, in a recent judgment dated 22.02.2024 titled as '***Vikas Chandra Vs. State of Uttar Pradesh and another 2024 INSC 261***', the



Hon'ble Supreme Court reiterated the position that the order of issuance of summons could be interfered with by the High Court in exercise of powers under Section 482 of Cr.P.C.

9. In view of the above discussed proposition of law, it is explicit that a complaint can be quashed and an order of issuance of summons can be interfered with by this Court by invoking powers under Section 528 of BNSS, however at the same time, it is also to be kept in mind that the inherent jurisdiction under Section 528 of BNSS is to be exercised sparingly and with caution only when such exercise is justified by the test specifically laid down in the section itself. It is well settled proposition of law that an appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of this power and the inherent powers so vested do not confer any arbitrary jurisdiction upon the High Court to act according to whims and caprices.

10. On applying the above mentioned proposition of law to the facts of the present case, it is to be seen as to whether the complaint as lodged by the respondent is liable to be quashed or not? The main thrust of the arguments address by learned counsel for the petitioner is that since he is unable to repay the loan taken from the respondent as he is a man of no means, who is having no property or source of income whatsoever and also in view of the fact that he has filed aforesaid suit under the provisions of the Provincial Insolvency Act, 1920 for declaring him as an indigent/insolvent person absolving him to discharge any liability qua the respondent and the general public, hence, the complaint is liable to be quashed. However, on



going through the record, this Court is of the considered opinion that the contention as raised by learned counsel for the petitioner has no substance in view of the fact that at this stage, he has neither denied his signatures on the cheque in question nor the factum of issuance thereof. His arguments regarding his insolvency, if any, can also not be accepted as a ground for quashing the impugned complaint. First of all, the Provincial Insolvency Act, 1920, under the provisions of which the aforesaid civil suit has been filed by the petitioner, stands repealed and the Insolvency and Bankruptcy Code, 2016 has come into force. However, even if it is assumed that the petitioner would have initiated proceedings under the provisions of the Insolvency and Bankruptcy Code, 2016, even then the criminal proceedings under Section 138 of the NI Act are not affected by the moratorium provisions of the Insolvency and Bankruptcy Code, 2016. Reliance in this regard can be placed upon the authority cited as *Ajay Kumar Radheshyam Goenka vs. Tourism Finance Corpn. of India Ltd., (2023) 10 SCC 545*, wherein Hon'ble Supreme Court has emphasized that the proceedings under Section 138 of the NI Act are penal in nature and not affected by the interim moratorium under the Insolvency and Bankruptcy Code, 2016. It was observed that the initiation of insolvency proceedings by a borrower did not absolve him of his liability under Section 138 of the NI Act.

11. Further, it is not the claim of the petitioner that as on the date of issuance of cheque in question, the liability to make payment of the amount as mentioned therein did not subsist. It is well settled proposition of law that if on the date of issuance of cheque, liability of debt exists or the amount



mentioned therein has become legally recoverable, Section 138 of the NI Act is attracted since issuance of cheque itself represents the outstanding liability. It is worth mentioning that the learned Magistrate, after considering the evidence produced on record and by forming opinion under Section 227 of BNSS (*which is pari materia with Section 204 of Cr.P.C.*) observed that there are sufficient grounds for proceeding and issued summons for procuring the attendance of the petitioner as an accused. The Magistrate was not required to examine the merits and de-merits of the case as the test to be applied at this stage is as to whether the allegations in the complaint as they stand without adding or detracting the complaint *prima facie* established the ingredients of the offence alleged. It is well settled that the Court at the stage of issuing process cannot test the veracity of allegations nor for that matter can it proceed in the manner that a judge conducting a trial would, on the basis of the evidence collected during the course of the trial. As such, the contention as raised by the petitioner cannot be accepted. Accordingly, finding no merit, the petition is dismissed.

[MANISHA BATRA]
JUDGE

23.07.2025
Waseem Ansari

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| 1. Whether speaking/ reasoned | : | Yes/No |
| 2. Whether reportable | : | Yes/No |